

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA**

STANDING ROCK SIOUX TRIBE,)	
)	
Plaintiff,)	
)	
and)	
)	
CHEYENNE RIVER SIOUX TRIBE,)	
)	
Plaintiff-Intervenor,)	
)	
v.)	Case No. 1:16-cv-01534 (JEB)
)	(consolidated with Cases No.
UNITED STATES ARMY CORPS OF)	1:16-cv-01796 & 1:17-cv-00267)
ENGINEERS,)	
)	
Defendant,)	
)	
and)	
)	
DAKOTA ACCESS, LLC,)	
)	
Defendant-Intervenor.)	
)	

NOTICE OF FILING PURSUANT TO ECF 417

Pursuant to this Court's May 8, 2019 Order, ECF No. 417, the United States Army Corps of Engineers submits the following affidavit attached as Exhibit One.

Dated: May 22, 2019

Respectfully submitted,

JEAN E. WILLIAMS
Deputy Assistant Attorney General
Environment & Natural Resources Division

By: */s/ Amarveer Brar*
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OF COUNSEL:

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U.S. Army Corps of Engineers
Office of Chief Counsel
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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Amarveer Brar

Amarveer Brar

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AFFIDAVIT OF MS. MELANIE CASNER

I, Melanie L. Casner, declare as follows:

1. I am an Assistant Counsel in the Headquarters of the U.S. Army Corps of Engineers, Office of the Chief Counsel. I led a team of Corps attorneys in performing the confidentiality review of documents included in the Remand Administrative Record. I am a member in good standing of the Bar of the State of Texas.
2. This affidavit is submitted in response to the Court's May 8, 2019 Order requiring the Corps to "submit an affidavit detailing its legal rationale for the redaction of the as-built drawings and the reasons, if any, that the information could not be revealed to Plaintiffs subject to the protective order." ECF No. 417 at 2.
3. The Remand Administrative Record filed by the Corps on February 4, 2019, ECF No. 398, contains the as-built drawings for where the Dakota Access Pipeline crosses Lake

Oahe. The bates number range for the as-built drawings is RAR004894-4901. The as-built drawings label the pipeline location and the locations of above-ground valves.

4. The Corps redacted a portion of the information in the as-built drawings consistent with PHMSA guidance regarding 49 U.S.C. § 60138, as well as 5 U.S.C. § 552(b)(7)(F), 5 U.S.C. § 552(b)(3), and consistent with this Court's April 7, 2017 Opinion, ECF No. 206. In making the decision to redact, the Corps balanced the interest in making the information publicly available and protecting information from public disclosure for security reasons.
5. The redactions at RAR004896, 4897, 4898, and 4900 protects detailed illustrations of the as-built pipeline, and associated operational facilities as overlaid on photographs showing Lake Oahe and adjacent uplands because they represent an operational attribute or label of an above-ground pipeline facility shown on maps or illustration. After consulting correspondence and guidance previously received from PHMSA, as well as this Court's April 7, 2017 Order, we determined that this information is considered security-sensitive under 49 U.S.C. § 60138, and the information would be withheld if it was requested through FOIA, pursuant to 5 U.S.C. § 552(b)(7)(F), 5 U.S.C. § 552(b)(3) because it contains information, that if released, could reasonably be expected to endanger the life or physical property of an individual. As a result, we redacted it to avoid potential release of such information to the public.
6. The Remand Administrative Record index, ECF No. 398-1, indicates that some information in the as-built drawings is redacted because it contains critical infrastructure data. This is a mistake. The index will be revised to reflect the proper basis for redaction, which is as security-sensitive information.
7. The Corps would agree to provide this information to the parties subject to the protective order. ECF No. 235, as amended by minute order on October 6, 2017 and ECF No. 390. This would allow the parties, who are parties to the protective order, to have access to the unredacted as-built drawings for purposes of summary-judgment briefing and to file any materials under seal as appropriate, pursuant to the protective order.
8. Pursuant to 28 U.S.C. 1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on: May 22, 2019


Melanie Casner
U.S. Army Corps of Engineers
Office of Chief Counsel